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**Amendment No. 1 to HB1226**

**Jones U**  
**Signature of Sponsor**

**AMEND Senate Bill No. 1609**

**House Bill No. 1226\***

by deleting all language after the enacting clause and by substituting instead the following:

**SECTION 1.**

As used in this act, unless the context otherwise requires:

(1) "Authorized collector" means tax collection official designated by the legislative body of the municipality to collect the taxes levied by this act;

(2) "Consideration" means the consideration charged, whether or not received, for the occupancy in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits, property and services of any kind or nature without any deduction therefrom whatsoever. Nothing in this definition shall be construed to imply that consideration is charged when the space provided to the person is complimentary from the operator and no consideration is charged to or received from any person;

(3) "Hotel" means any structure or space, or any portion thereof, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist camp, tourist court, tourist cabin, motel or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration;

(4) "Municipality" means a municipality created and organized under either a private act or the general law and includes a municipality which adopts home rule in accordance with the Constitution of Tennessee, Article XI, § 9;

(5) "Occupancy" means the use or possession, or the right to the use or possession, of any room, lodgings or accommodations in any hotel;

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(6) "Operator" means the person operating the hotel whether as owner, lessee or otherwise;

(7) "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate or any other group or combination acting as a unit; and

(8) "Transient" means any person who exercises occupancy or is entitled to occupancy for any rooms, lodgings or accommodations in a hotel for a period of less than thirty (30) continuous days.

SECTION 2. Subject to the provisions of Section 12 (a)(3), each municipality in this state is authorized to levy by ordinance adopted by a two-thirds (2/3) vote of its municipal legislative body a privilege tax upon the privilege of occupancy in any hotel of each transient in an amount not to exceed two and one-half percent (2.5%) of the consideration charged by the operator.

SECTION 3. The proceeds received by the municipality from the tax levied pursuant to this act shall be designated and used for tourism as defined in § 7-4-101(8).

SECTION 4.

(a)

(1) The tax shall be added by each operator to each invoice which the operator prepares and gives directly, or transmits, to the transient for the occupancy of the operator's hotel.

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(2) The tax so invoiced shall be collected from the transient by the operator and remitted to the municipality.

(b) When a person has maintained occupancy for thirty (30) continuous days, that person shall receive from the operator a refund or credit for the tax previously collected from or charged to that person, and the operator shall receive credit for the amount of such tax if previously paid or reported to the municipality.

**SECTION 5.**

(a) The tax levied shall be remitted by all operators who lease, rent or charge for rooms or spaces in hotels within the municipality, to such officer as may by the ordinance be charged with the duty of collection thereof, the tax to be remitted to such officer not later than the twentieth day of each month for the preceding month. The operator is hereby required to collect the tax from the transient at the time of the presentation of the invoice for occupancy as may be the custom of the operator, and if credit is granted by the operator to the transient, then the obligation to the municipality entitled to such tax shall be that of the operator.

(b) For the purpose of compensating the operator in accounting for remitting the tax levied pursuant to this act, the operator shall be allowed two percent (2%) of the amount of the tax due and accounted for and remitted to the officer in the form of a deduction in submitting the operator's report and paying

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the amount due by such operator; provided, that the amount due was not delinquent at the time of payment.

**SECTION 6.**

(a)

(1) The authorized collector of the tax shall be responsible for the collection of such tax and shall place the proceeds of such tax in accounts for the purposes stated herein.

(2) A monthly tax return shall be filed under oath with the authorized collector by the operator with such number of copies thereof as such collector may reasonably require for the collection of such tax.

(3) The report of the operator shall include such facts and information as may be deemed reasonable for the verification of the tax due. The form of such report shall be developed by the authorized collector and approved by the municipal legislative body prior to use.

(4) The authorized collector shall audit each operator in the municipality at least once per year and shall report on the audits made on a quarterly basis to the municipal legislative body.

(b) The municipal legislative body is hereby authorized to adopt reasonable rules and regulations for the implementation of the provisions of this act, including the form for such reports.

**SECTION 7.** No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be

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assumed or absorbed by the operator or that it will not be added to the rent, or that if added, any part will be refunded.

**SECTION 8.**

(a) Taxes collected by an operator which are not remitted to the authorized collector on or before the due dates shall be delinquent.

(b) An operator shall be liable for interest on such delinquent taxes from the due date at the rate of twelve percent (12%) per annum, and in addition, for the penalty of one percent (1%) for each month or fraction thereof such taxes are delinquent. Such interest and penalty shall become a part of the tax herein required to be remitted.

(c) Each occurrence of willful refusal of an operator to collect or remit the tax or willful refusal of a transient to pay the tax imposed is a Class A misdemeanor, punishable upon conviction by a fine not in excess of fifty dollars (\$50.00).

**SECTION 9.** It is the duty of every operator liable for the collection of and payment to the municipality of any tax imposed by this act to keep and preserve for a period of three (3) years all records as may be necessary to determine the amount of such tax for which the operator may have been liable for the collection of and payment to the municipality, which records the authorized collector shall have the right to inspect at all reasonable times.

**SECTION 10.**

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(a) The authorized collector in administering and enforcing the provisions of this act has, as additional powers, those powers and duties with respect to collecting taxes as provided in this title or otherwise provided by law for the county clerks.

(b) Upon any claim of illegal assessment and collection, the taxpayer shall have the remedies provided in this title, it being the intent of this act that the provisions of law which apply to the recovery of state taxes illegally assessed and collected also apply to taxes illegally assessed and collected under the authority of this act; provided, that the authorized collector shall possess those powers and duties as provided in § 67-1-707 for the county clerks.

(c) With respect to the adjustment and settlement with taxpayers, all errors of taxes collected by the authorized collector under the authority of this act shall be refunded by the authorized collector.

(d) Notice of any tax paid under protest shall be given to the authorized collector and the ordinance authorizing levy of the tax shall designate a municipal officer against whom suit may be brought for recovery.

SECTION 11. The proceeds of the tax authorized by this act shall be allocated to and placed in the general fund or other fund of the municipality to be used for the purposes stated in Section 3.

SECTION 12.

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(a) Except as provided in this subsection, after the effective date of this act, any new occupancy tax which may be levied by a municipality shall be levied in accordance with the provisions of Sections 1 through 11 of this act:

(1) The provisions of Tennessee Code Annotated, Title 7, Chapter 4, Part 1 shall continue to apply to "counties and municipalities" as this term is defined in § 7-4-101, provided that no such county or municipality that levies or has levied an occupancy tax under the authority of Title 7, Chapter 4, Part 1, may use the authority of Sections 1 through 12 of this act to levy an additional tax.

(2) The provisions of Tennessee Code Annotated, Title 67, Chapter 4, Part 14, shall continue to apply to municipalities which, prior to the effective date of this act:

(1) have adopted home rule in accordance with the Constitution of Tennessee, Article XI, § 9; and

(2) which have enacted an occupancy tax pursuant to part 14.

Municipalities which adopt home rule in accordance with the Constitution of Tennessee, Article XI, § 9 on or after the effective date of this act or municipalities which, having adopted home rule in accordance with the Constitution of Tennessee, Article XI, § 9 prior to the effective date of this act have not previously enacted an occupancy tax, shall only be authorized to levy an occupancy tax after the effective date of this act

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in accordance with the provisions of Sections 1 through 11 of this act. No municipality that levies or has levied an occupancy tax under the authority of Title 67, Chapter 4, Part 14, may use the authority of Sections 1 through 12 of this act to levy an additional tax.

(3) No municipality that levies or has levied an occupancy tax under the authority of a private act or other general law may use the authority of this act to levy an additional tax.

(b) Private acts authorizing an occupancy tax at the rates and under the terms authorized in such private acts in effect on or prior to the effective date of this act are validated and continued. Ordinances and resolutions enacting an occupancy tax under the authority of a private act or other general law in effect on or prior to the effective date of this act are validated and ratified.

(c) Nothing in this act shall be construed as prohibiting a municipality or county which has enacted an occupancy by private act or other general law from increasing the maximum rates contained in such acts.

(d) The provisions of this act shall not apply in any county having a population in excess of two hundred thousand (200,000), according to the 2000 federal census or any subsequent federal census.

SECTION 13. Tennessee Code Annotated, Section 67-4-1425, is amended by deleting the section in its entirety and by substituting instead the following language:



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(a) After the effective date of this act, any private act or general law which authorizes a city or county to levy a tax on the privilege of occupancy of a hotel shall limit the application of such tax as follows:

(1) A city shall only levy such tax on occupancy of hotels located within its municipal boundaries; and

(2) A county shall only levy such tax on occupancy of hotels located within its boundaries but outside the boundaries of any municipality which has levied a tax on such occupancy prior to the adoption of such tax by the county.

(b) The provisions of this section do not apply to any city which has constructed a qualifying project or projects under the Convention Center and Tourism Development Financing Act of 1998, compiled in title 7, chapter 88. Further, § 67-4-503 shall not be applicable to such cities as it relates to the authority to levy an occupancy tax.

(c) The provisions of this section shall not apply in any county having a population in excess of two hundred thousand (200,000), according to the 2000 federal census or any subsequent federal census.

SECTION 14. Notwithstanding any other provision of law to the contrary, the provisions of Section 67-4-503 shall not apply to an occupancy tax levied and adopted pursuant to the provisions of Sections 1 through 12 of this act.

SECTION 15. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or

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applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 16. This act shall take effect July 1, 2003, the public welfare requiring it.